

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (New Administrative Regulation)

5 907 KAR 1:046. Community mental health center primary care services.

6 RELATES TO: KRS 205.520, 210.410.

7 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313,
8 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)

9 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
10 Services, Department for Medicaid Services, has a responsibility to administer the Med-
11 icaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to
12 comply with any requirement that may be imposed or opportunity presented by federal
13 law to qualify for federal Medicaid funds. This administrative regulation establishes the
14 Department for Medicaid Services' coverage provisions and requirements regarding
15 primary care services provided in a community mental health center.

16 Section 1. Definitions. (1) "Advanced practice registered nurse" is defined by KRS
17 314.011(7).

18 (2) "Community mental health center" or "CMHC" means a facility which meets the
19 community mental health center requirements established in 902 KAR 20:091.

20 (3) "Department" means the Department for Medicaid Services or its designee.

21 (4) "Enrollee" means a recipient who is enrolled with a managed care organization.

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not excluded as a non-covered immunization or vaccine;

(b) Requires special handling, storage, shipping, dosing, or administration; and

(c) Is a rebatable drug.

(7) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(8) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Physician assistant" is defined by KRS 311.840(3).

(10) "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(11) "Recipient" is defined by KRS 205.8451(9).

Section 2. General Requirements. (1) For the department to reimburse for a primary care service provided by a community mental health center under this administrative regulation, the:

(a) CMHC shall be currently:

1. Enrolled in the Medicaid Program in accordance with 907 KAR 1:672;

2. Participating in the Medicaid Program in accordance with 907 KAR 1:671; and

3. Licensed in accordance with 902 KAR 20:091; and

(b) Service shall:

1. Be medically necessary;

2. Meet the coverage and related requirements established in this administrative regulation; and

3. Provided by:

a. A physician;

b. An advanced practice registered nurse; or

c. A physician assistant.

(2) In accordance with 907 KAR 17:015, Section 3(3), a CMHC which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A CMHC shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

Section 3. Covered Services. The physical health services covered pursuant 907 KAR 3:005 shall be covered:

(1) Under this administrative regulation; and

(2) In accordance with the requirements established in 907 KAR 3:005 except that primary care services provided in a community mental health center shall only be provided by:

(a) A physician;

(b) An advanced practice registered nurse; or

(c) A physician assistant.

1 Section 4. Service Limitations. The limitations established in 907 KAR 3:005 for phys-
2 ical health services shall apply to primary care services provided in a CMHC under this
3 administrative regulation.

4 Section 5. Prior Authorization Requirements. The prior authorization requirements
5 established in 907 KAR 3:005 for physical health services shall apply to services pro-
6 vided in a CMHC under this administrative regulation.

7 Section 6. Injectable Drugs. An injectable drug listed on the Physician Injectable Drug
8 List that is administered in a CMHC shall be covered.

9 Section 7. No Duplication of Service. (1) The department shall not reimburse for a
10 primary care service provided to a recipient by more than one (1) provider of any pro-
11 gram in which primary care services are covered during the same time period.

12 (2) For example, if a recipient is receiving a primary care service from a rural health
13 clinic enrolled with the Medicaid Program, the department shall not reimburse for the
14 same primary care service provided to the same recipient during the same time period
15 by a community mental health center.

16 Section 8. Records Maintenance, Protection, and Security. (1) A provider shall main-
17 tain a current health record for each recipient.

18 (2) A health record shall document each service provided to the recipient including
19 the date of the service and the signature of the individual who provided the service.

20 (3) The individual who provided the service shall date and sign the health record on
21 the date that the individual provided the service.

22 (4)(a) Except as established in paragraph (b) of this subsection, a provider shall
23 maintain a health record regarding a recipient for at least five (5) years from the date of

1 the service or until any audit dispute or issue is resolved beyond five (5) years.

2 (b) If the secretary of the United States Department of Health and Human Services
3 requires a longer document retention period than the period referenced in paragraph (a)
4 of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary
5 shall be the required period.

6 (5) A provider shall comply with 45 C.F.R. Part 164.

7 Section 9. Medicaid Program Participation Compliance. (1) A provider shall comply
8 with:

9 (a) 907 KAR 1:671;

10 (b) 907 KAR 1:672; and

11 (c) All applicable state and federal laws.

12 (2)(a) If a provider receives any duplicate payment or overpayment from the depart-
13 ment, regardless of reason, the provider shall return the payment to the department.

14 (b) Failure to return a payment to the department in accordance with paragraph (a) of
15 this subsection may be:

16 1. Interpreted to be fraud or abuse; and

17 2. Prosecuted in accordance with applicable federal or state law.

18 Section 10. Third Party Liability. A provider shall comply with KRS 205.622.

19 Section 11. Use of Electronic Signatures. (1) The creation, transmission, storage, and
20 other use of electronic signatures and documents shall comply with the requirements
21 established in KRS 369.101 to 369.120.

22 (2) A provider that chooses to use electronic signatures shall:

23 (a) Develop and implement a written security policy that shall:

1 1. Be adhered to by each of the provider's employees, officers, agents, or contrac-
2 tors;

3 2. Identify each electronic signature for which an individual has access; and

4 3. Ensure that each electronic signature is created, transmitted, and stored in a se-
5 cure fashion;

6 (b) Develop a consent form that shall:

7 1. Be completed and executed by each individual using an electronic signature;

8 2. Attest to the signature's authenticity; and

9 3. Include a statement indicating that the individual has been notified of his or her re-
10 sponsibility in allowing the use of the electronic signature; and

11 (c) Provide the department, immediately upon request, with:

12 1. A copy of the provider's electronic signature policy;

13 2. The signed consent form; and

14 3. The original filed signature.

15 Section 12. Auditing Authority. The department shall have the authority to audit any
16 claim, medical record, or documentation associated with any claim or medical record.

17 Section 13. Federal Approval and Federal Financial Participation. The department's
18 coverage of services pursuant to this administrative regulation shall be contingent upon:

19 (1) Receipt of federal financial participation for the coverage; and

20 (2) Centers for Medicare and Medicaid Services' approval for the coverage.

21 Section 14. Appeal Rights. (1) An appeal of an adverse action by the department re-
22 garding a service and a recipient who is not enrolled with a managed care organization
23 shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 15. Incorporation by Reference. (1) The "Physician Injectable Drug List", February 21, 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:


(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at
<http://www.chfs.ky.gov/dms/incorporated.htm>.

907 KAR 1:046

REVIEWED:

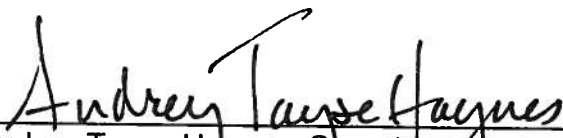
12/5/14
Date



Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

12/18/14
Date



Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on February 23, 2015 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 16, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business March 2, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 907 KAR 1:046

Contact person: Stuart Owen (502) 564-4321, extension 2015

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding community mental health center (CMHC) primary care services covered by the Medicaid Program. Key requirements include that the authorized primary care practitioners are physicians, physician assistants, and advanced practice registered nurses; that any physical health service or limit established for Medicaid-program physician's services (pursuant to 907 KAR 3:005) shall also apply primary care services provided in CMHCs; and that the prior authorization requirements established in 907 KAR 3:005 shall also apply to CMHC primary care services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program as authorized by KRS 205.6313.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes (including KRS 205.6313) by establishing the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes (including KRS 205.6313) by establishing the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation rather than an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Community mental health centers will be affected by this amendment as will Medicaid recipients who receive services from CMHCs. There are fourteen (14) such centers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if

it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. CMHCs that wish to provide primary care services to Medicaid recipients will have to do so according to the requirements such as having staff authorized to provide such services (physicians, advanced practice registered nurses, or physician assistants.)

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). CMHCs that wish to provide primary care services to Medicaid recipients will benefit by being enabled to receive reimbursement for such services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action.

(b) On a continuing basis: The response to (a) above also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 907 KAR 1:046

Contact person: Stuart Owen (502) 564-4321, extension 2015

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that community mental health centers provide primary care services.
2. State compliance standards. KRS 205.6313 requires the Medicaid Program to reimburse for primary care services provided by a licensed physician, advanced practice registered nurse, or physician assistant employed by a community mental health center.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate that community mental health centers provide primary care services.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 907 KAR 1:046

Contact person: Stuart Owen (502) 564-4321, extension 2015

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), and KRS 205.6313.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not anticipate additional revenues for state or local government as a result of the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The response to question (a) also applies here.

(c) How much will it cost to administer this program for the first year? Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action.

(d) How much will it cost to administer this program for subsequent years? The response in (c) above also applies here.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 1:046

Summary of Material Incorporated by Reference

The "Physician Injectable Drug List", February 21, 2014 is incorporated by reference. This is a twenty-six (26) page document which lists the injectable drugs covered by Kentucky's Medicaid Program.